

1                   A bill to be entitled  
2           An act relating to building design; amending s.  
3           163.3202, F.S.; providing that certain regulations  
4           relating to building design elements may not be  
5           applied to certain structures; providing exceptions;  
6           defining the term "building design elements";  
7           providing applicability; amending s. 553.73, F.S.;  
8           authorizing a substantially affected person to file a  
9           petition with the Florida Building Commission to  
10          review certain local government regulations, laws,  
11          ordinances, policies, amendments, or land use or  
12          zoning provisions; defining the term "local  
13          government"; providing requirements for the petition  
14          and commission; requiring the commission to issue a  
15          nonbinding advisory opinion within a specified  
16          timeframe; making technical changes; amending ss.  
17          125.01 and 125.56, F.S.; conforming cross-references  
18          to changes made by the act; making technical changes;  
19          providing an effective date.

20  
21   Be It Enacted by the Legislature of the State of Florida:

22  
23           Section 1. Subsection (5) of section 163.3202, Florida  
24   Statutes, is renumbered as subsection (6), and a new subsection  
25   (5) is added to that section to read:

26 | 163.3202 Land development regulations.—

27 | (5) (a) Land development regulations relating to building  
 28 | design elements may not be applied to a single- or two-family  
 29 | dwelling unless:

30 | 1. The dwelling is listed in the National Register of  
 31 | Historic Places, as defined in s. 267.021; or is a contributing  
 32 | property to a National Register Historic District; or is  
 33 | designated as a historic property or a contributing property to  
 34 | a historic district, under the terms of a local preservation  
 35 | ordinance.

36 | 2. The regulations are adopted in order to implement the  
 37 | National Flood Insurance Program.

38 | 3. The regulations are adopted pursuant to and in  
 39 | compliance with chapter 553.

40 | (b) For purposes of this subsection, the term "building  
 41 | design elements" means the external building color; type or  
 42 | style of exterior cladding material; style or material of roof  
 43 | structures or porches; exterior nonstructural architectural  
 44 | ornamentation; location or architectural styling of windows or  
 45 | doors, including garage doors; number and type of rooms; and  
 46 | interior layout of rooms. The term does not include the height,  
 47 | bulk, orientation, or location of a structure on a zoning lot;  
 48 | or the use of buffering or screening to minimize potential  
 49 | adverse physical or visual impacts or protect the privacy of  
 50 | neighbors.

51           (c) This subsection does not affect the validity or  
 52 enforceability of private covenants or other contractual  
 53 agreements relating to building design elements.

54           Section 2. Subsection (4) of section 553.73, Florida  
 55 Statutes, is amended to read:

56           553.73 Florida Building Code.—

57           (4) (a) All entities authorized to enforce the Florida  
 58 Building Code under ~~pursuant to~~ s. 553.80 shall comply with  
 59 applicable standards for issuance of mandatory certificates of  
 60 occupancy, minimum types of inspections, and procedures for  
 61 plans review and inspections as established by the commission by  
 62 rule. Local governments may adopt amendments to the  
 63 administrative provisions of the Florida Building Code, subject  
 64 to the limitations in ~~of~~ this subsection ~~paragraph~~. Local  
 65 amendments must ~~shall~~ be more stringent than the minimum  
 66 standards described in this section ~~herein~~ and must ~~shall~~ be  
 67 transmitted to the commission within 30 days after enactment.  
 68 The local government shall make such amendments available to the  
 69 general public in a usable format. The State Fire Marshal is  
 70 responsible for establishing the standards and procedures  
 71 required in this subsection ~~paragraph~~ for governmental entities  
 72 with respect to applying the Florida Fire Prevention Code and  
 73 the Life Safety Code.

74           (b) Local governments may, subject to the limitations in  
 75 ~~of~~ this section and not more than once every 6 months, adopt

76 amendments to the technical provisions of the Florida Building  
77 Code that ~~which~~ apply solely within the jurisdiction of such  
78 government and that ~~which~~ provide for more stringent  
79 requirements than those specified in the Florida Building Code, ~~r~~  
80 ~~not more than once every 6 months~~. A local government may adopt  
81 technical amendments that address local needs if:

82 1. The local governing body determines, following a public  
83 hearing which has been advertised in a newspaper of general  
84 circulation at least 10 days before the hearing, that there is a  
85 need to strengthen the requirements of the Florida Building  
86 Code. The determination must be based upon a review of local  
87 conditions by the local governing body, which review  
88 demonstrates by evidence or data that the geographical  
89 jurisdiction governed by the local governing body exhibits a  
90 local need to strengthen the Florida Building Code beyond the  
91 needs or regional variation addressed by the Florida Building  
92 Code, that the local need is addressed by the proposed local  
93 amendment, and that the amendment is no more stringent than  
94 necessary to address the local need.

95 2. Such additional requirements are not discriminatory  
96 against materials, products, or construction techniques of  
97 demonstrated capabilities.

98 3. Such additional requirements do ~~may~~ not introduce a new  
99 subject not addressed in the Florida Building Code.

100 (c)4- The enforcing agency shall make readily available,

101 in a usable format, all amendments adopted under ~~pursuant to~~  
102 this section.

103 (d)5. Any amendment to the Florida Building Code shall be  
104 transmitted within 30 days after adoption by the ~~adopting~~ local  
105 government to the commission. The commission shall maintain  
106 copies of all such amendments in a format that is usable and  
107 obtainable by the public. Local technical amendments are ~~shall~~  
108 not ~~become~~ effective until 30 days after the amendment has been  
109 received and published by the commission.

110 (e)6. ~~An~~ Any amendment to the Florida Building Code  
111 adopted by a local government under ~~pursuant to~~ this subsection  
112 ~~is paragraph~~ shall be effective only until the adoption ~~by the~~  
113 ~~commission~~ of the new edition of the Florida Building Code by  
114 the commission every third year. At such time, the commission  
115 shall review such amendment for consistency with the criteria in  
116 paragraph (9) (a) and adopt such amendment as part of the Florida  
117 Building Code or rescind the amendment. The commission shall  
118 immediately notify the respective local government of the  
119 rescission of any amendment. After receiving such notice, the  
120 respective local government may readopt the rescinded amendment  
121 under ~~pursuant to~~ the provisions of this subsection ~~paragraph~~.

122 (f)7. Each county and municipality desiring to make local  
123 technical amendments to the Florida Building Code shall ~~by~~  
124 ~~interlocal agreement~~ establish by interlocal agreement a  
125 countywide compliance review board to review any amendment to

126 | the Florida Building Code that is~~7~~ adopted by a local government  
 127 | within the county under ~~pursuant to~~ this subsection and  
 128 | ~~paragraph~~<sup>7</sup>, that is challenged by a ~~any~~ substantially affected  
 129 | party for purposes of determining the amendment's compliance  
 130 | with this subsection ~~paragraph~~. If challenged, the local  
 131 | technical amendments are ~~shall~~ not ~~become~~ effective until the  
 132 | time for filing an appeal under paragraph (g) ~~pursuant to~~  
 133 | ~~subparagraph 8~~<sup>7</sup> has expired or, if there is an appeal, until the  
 134 | commission issues its final order determining if the adopted  
 135 | amendment is in compliance with this subsection.

136 | (g)8<sup>7</sup>. If the compliance review board determines such  
 137 | amendment is not in compliance with this subsection ~~paragraph~~,  
 138 | the compliance review board shall notify such local government  
 139 | of the noncompliance and that the amendment is invalid and  
 140 | unenforceable until the local government corrects the amendment  
 141 | to bring it into compliance. The local government may appeal the  
 142 | decision of the compliance review board to the commission. If  
 143 | the compliance review board determines that such amendment is ~~to~~  
 144 | ~~be~~ in compliance with this subsection ~~paragraph~~, any  
 145 | substantially affected party may appeal such determination to  
 146 | the commission. Any such appeal must ~~shall~~ be filed with the  
 147 | commission within 14 days after ~~of~~ the board's written  
 148 | determination. The commission shall promptly refer the appeal to  
 149 | the Division of Administrative Hearings by electronic means  
 150 | through the division's website for the assignment of an

151 administrative law judge. The administrative law judge shall  
152 conduct the required hearing within 30 days after being assigned  
153 to the appeal, and shall enter a recommended order within 30  
154 days after ~~of~~ the conclusion of such hearing. The commission  
155 shall enter a final order within 30 days after an order is  
156 rendered thereafter. ~~The provisions of Chapter 120 and the~~  
157 uniform rules of procedure shall apply to such proceedings. The  
158 local government adopting the amendment that is subject to  
159 challenge has the burden of proving that the amendment complies  
160 with this subsection ~~paragraph~~ in proceedings before the  
161 compliance review board and the commission, as applicable.  
162 Actions of the commission are subject to judicial review under  
163 ~~pursuant to~~ s. 120.68. The compliance review board shall  
164 determine whether its decisions apply to a respective local  
165 jurisdiction or apply countywide.

166 (h)9. An amendment adopted under this subsection ~~paragraph~~  
167 shall include a fiscal impact statement that ~~which~~ documents the  
168 costs and benefits of the proposed amendment. Criteria for the  
169 fiscal impact statement shall include the impact to local  
170 government relative to enforcement and,~~7~~ the impact to property  
171 and building owners and,~~7~~ ~~as well as to~~ industry,~~7~~ relative to the  
172 cost of compliance. The fiscal impact statement may not be used  
173 as a basis for challenging the amendment for compliance.

174 (i)10. In addition to paragraphs (f) and (g) ~~subparagraphs~~  
175 ~~7. and 9.~~, the commission may review any amendments adopted

176 | under ~~pursuant to~~ this subsection and make nonbinding  
 177 | recommendations related to compliance of such amendments with  
 178 | this subsection.

179 |       (j) ~~(e)~~ Any amendment adopted by a local enforcing agency  
 180 | under ~~pursuant to~~ this subsection may ~~shall~~ not apply to state  
 181 | or school district owned buildings, manufactured buildings or  
 182 | factory-built school buildings approved by the commission, or  
 183 | prototype buildings approved under ~~pursuant to~~ s. 553.77(3). The  
 184 | respective responsible entities shall consider the physical  
 185 | performance parameters substantiating such amendments when  
 186 | designing, specifying, and constructing such exempt buildings.

187 |       (k) ~~(d)~~ A technical amendment to the Florida Building Code  
 188 | related to water conservation practices or design criteria  
 189 | adopted by a local government under ~~pursuant to~~ this subsection  
 190 | is not ~~rendered~~ void when the code is updated if the technical  
 191 | amendment is necessary to protect or provide for more efficient  
 192 | use of water resources as provided in s. 373.621. However, any  
 193 | such technical amendment carried forward into the next edition  
 194 | of the code under ~~pursuant to~~ this subsection ~~paragraph~~ is  
 195 | subject to review or modification as provided in this part.

196 |       (1) If a local government adopts a regulation, law,  
 197 | ordinance, policy, amendment, or land use or zoning provision  
 198 | without using the process established in this subsection, and a  
 199 | substantially affected person considers such regulation, law,  
 200 | ordinance, policy, amendment, or land use or zoning provision to

201 be a technical amendment to the Florida Building Code, then the  
202 substantially affected person may submit to the commission a  
203 petition for a nonbinding advisory opinion. If a substantially  
204 affected person submits a request in accordance with this  
205 paragraph, the commission shall issue a nonbinding advisory  
206 opinion stating whether or not the commission interprets the  
207 regulation, law, ordinance, policy, amendment, or land use or  
208 zoning provision as a technical amendment to the Florida  
209 Building Code. As used in this paragraph, the term "local  
210 government" means a county, municipality, special district, or  
211 political subdivision of the state.

212 1. Requests to review a local government regulation, law,  
213 ordinance, policy, amendment, or land use or zoning provision  
214 may be initiated by any substantially affected person. A  
215 substantially affected person includes an owner or builder  
216 subject to the regulation, law, ordinance, policy, amendment, or  
217 land use or zoning provision, or an association of owners or  
218 builders having members who are subject to the regulation, law,  
219 ordinance, policy, amendment, or land use or zoning provision.

220 2. In order to initiate a review, a substantially affected  
221 person must file a petition with the commission. The commission  
222 shall adopt a form for the petition and directions for filing,  
223 which shall be published on the Building Code Information  
224 System. The form shall, at a minimum, require the following:

225 a. The name of the local government that enacted the

226 regulation, law, ordinance, policy, amendment, or land use or  
227 zoning provision.

228 b. The name and address of the local government's general  
229 counsel or administrator.

230 c. The name, address, and telephone number of the  
231 petitioner; the name, address, and telephone number of the  
232 petitioner's representative, if any; and an explanation of how  
233 the petitioner's substantial interests are being affected by the  
234 regulation, law, ordinance, policy, amendment, or land use or  
235 zoning provision.

236 d. A statement explaining why the regulation, law,  
237 ordinance, policy, amendment, or land use or zoning provision is  
238 a technical amendment to the Florida Building Code, and which  
239 provisions of the Florida Building Code, if any, are being  
240 amended by the regulation, law, ordinance, policy, amendment, or  
241 land use or zoning provision.

242 3. The petitioner shall serve the petition on the local  
243 government's general counsel or administrator by certified mail,  
244 return receipt requested, and send a copy of the petition to the  
245 commission, in accordance with the commission's published  
246 directions. The local government shall respond to the petition  
247 in accordance with the form by certified mail, return receipt  
248 requested, within 14 days after receipt of the petition,  
249 including Saturdays, Sundays, and legal holidays.

250 4. Upon receipt of a petition that meets the requirements

251 of this paragraph, the commission shall publish the petition,  
252 including any response submitted by the local government, on the  
253 Building Code Information System in a manner that allows  
254 interested persons to address the issues by posting comments.

255 5. Before issuing an advisory opinion, the commission  
256 shall consider the petition, the response, and any comments  
257 posted on the Building Code Information System. The commission  
258 may also provide the petition, the response, and any comments  
259 posted on the Building Code Information System to a technical  
260 advisory committee, and may consider any recommendation provided  
261 by the technical advisory committee. The commission shall issue  
262 an advisory opinion stating whether the regulation, law,  
263 ordinance, policy, amendment, or land use or zoning provision is  
264 a technical amendment to the Florida Building Code within 30  
265 days after the filing of the petition, including Saturdays,  
266 Sundays, and legal holidays. The commission shall publish its  
267 advisory opinion on the Building Code Information System and in  
268 the Florida Administrative Register. The commission's advisory  
269 opinion is nonbinding and is not a declaratory statement under  
270 s. 120.565.

271 Section 3. Paragraph (bb) of subsection (1) of section  
272 125.01, Florida Statutes, is amended to read:

273 125.01 Powers and duties.—

274 (1) The legislative and governing body of a county shall  
275 have the power to carry on county government. To the extent not

276 inconsistent with general or special law, this power includes,  
 277 but is not restricted to, the power to:

278 (bb) Enforce the Florida Building Code~~7~~ as provided in s.  
 279 553.80~~7~~ and adopt and enforce local technical amendments to the  
 280 Florida Building Code as provided in s. 553.73(4)~~7~~, ~~pursuant to~~  
 281 ~~s. 553.73(4)(b) and (c)~~.

282 Section 4. Subsection (1) of section 125.56, Florida  
 283 Statutes, is amended to read:

284 125.56 Enforcement and amendment of the Florida Building  
 285 Code and the Florida Fire Prevention Code; inspection fees;  
 286 inspectors; etc.—

287 (1) The board of county commissioners of each of the  
 288 several counties of the state may enforce the Florida Building  
 289 Code and the Florida Fire Prevention Code~~7~~ as provided in ss.  
 290 553.80, 633.206, and 633.208~~7~~ and, at its discretion, adopt  
 291 local technical amendments to the Florida Building Code as  
 292 provided in s. 553.73(4)~~7~~, ~~pursuant to s. 553.73(4)(b) and (c)~~  
 293 and local technical amendments to the Florida Fire Prevention  
 294 Code as provided in~~7~~, ~~pursuant to~~ s. 633.202~~7~~ to provide for the  
 295 safe construction, erection, alteration, repair, securing, and  
 296 demolition of any building within its territory outside the  
 297 corporate limits of any municipality. Upon a determination to  
 298 consider amending the Florida Building Code or the Florida Fire  
 299 Prevention Code by a majority of the members of the board of  
 300 county commissioners of such county, the board shall call a

301 public hearing and comply with the public notice requirements of  
302 s. 125.66(2). The board shall hear all interested parties at the  
303 public hearing and may then amend the building code or the fire  
304 code consistent with the terms and purposes of this act. Upon  
305 adoption, an amendment to the code shall be in full force and  
306 effect throughout the unincorporated area of such county until  
307 otherwise notified by the Florida Building Commission under  
308 ~~pursuant to~~ s. 553.73 or the State Fire Marshal under ~~pursuant~~  
309 ~~to~~ s. 633.202. This subsection does not ~~Nothing herein contained~~  
310 ~~shall be construed to~~ prevent the board of county commissioners  
311 from repealing such amendment to the building code or the fire  
312 code at any regular meeting of such board.

313 Section 5. This act shall take effect July 1, 2020.